

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-11065
Non-Argument Calendar

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| FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT NOVEMBER 13, 2006 THOMAS K. KAHN CLERK |
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D. C. Docket No. 03-21764-CV-JEM

EUGENE CAVICCHI,

Plaintiff-Appellant,

versus

HOMELAND SECURITY SECRETARY,
Michael Chertoff, and the United States Department
of Homeland Security by and through the
Bureau of Customs and Border Protection,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(November 13, 2006)

**ON REMAND FROM THE UNITED
STATES SUPREME COURT**

Before TJOFLAT, ANDERSON and DUBINA, Circuit Judges.

PER CURIAM:

The Supreme Court vacated the judgment of this court in this case and remanded the case to this court for further consideration in light of Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. __ (2006). Upon reconsideration, we vacate the judgment of the district court pertaining to Cavicchi's August 2002 Internal Affairs interview and remand to the district court for reconsideration in the light of Burlington.

AFFIRMED in PART, VACATED in PART, and REMANDED.¹

¹ Appellant's motion to transfer this case to the panel that decided Cavicchi I is denied.